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**DEC 15 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Richard C. Johnson : DECISION ON PETITION  
Application No. 09/490,783 :  
Filed: 24 January, 2000 :  
Atty Docket No. ORCL5628 :

This is a decision on the petition under 37 CFR 1.137(b),<sup>1</sup> filed on 6 October, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are

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<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on 9 July, 2005, for failure to file a proper reply to the final Office action mailed on 8 February, 2005, which set a three (3) month shortened statutory period for reply. On 9 May, 2005, an amendment after final rejection was filed. The examiner determined the amendment did not place the application in *prima facie* condition for allowance, however, and an Advisory Action was mailed on 19 May, 2005. A second amendment after final rejection accompanied by a two (2) month extension of the time for reply was filed on 8 July, 2005. The examiner determined that the second amendment did not place the application in *prima facie* condition for allowance, however, and an Advisory Action was mailed on 5 August, 2005. Notice of Abandonment was mailed on 25 August, 2005.

The petition is accompanied by an amendment after final rejection.

The petition lacks the required reply. The only proper reply to a final Office action is a Notice of Appeal and fee, Request for Continuing Examination and submission under 37 CFR 1.114, a continuing application, or an amendment placing the application in *prima facie* condition for allowance. The examiner has determined that the amendment filed on 6 October, 2005, does not place the case in *prima facie* condition for allowance. An Advisory Action Before the Filing of An Appeal Brief is enclosed for petitioner's information.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX:           (571) 273-8300  
                  Attn: Office of Petitions

By hand:          Customer Service Window  
                  Mail Stop Petition  
                  Randolph Building  
                  401 Dulany Street  
                  Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

A handwritten signature in black ink, appearing to read "D Wood", is positioned above the typed name.

Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Encl: Advisory Action Before the Filing of an Appeal Brief